

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

On or about July 7, 2018, petitioner Adrian Moon filed a Petition for Writ of Habeas Corpus by a Person in State Custody (the “Petition”) pursuant to 28 U.S.C. § 2254 (“Section 2254”). (Docket No. 1.) The Petition purports to challenge petitioner’s 2010 conviction for violation of California Penal Code sections 115(a) and 118(a). (*See id.* at 2.) However, in his single claim for relief, petitioner alleges that the undersigned and “Vincent Zurrullo” violated his civil rights by not allowing him to pay filing fees to reopen certain “civil rights lawsuits.”<sup>1</sup> (*Id.* at 5.)

<sup>1</sup> Petitioner alleges that he remains incarcerated as a result of respondents' alleged wrongful conduct. However, petitioner may not obtain the invalidation or reversal

1 Petitioner does not seek any habeas relief. Rather, he requests that an  
2 “evidentiary hearing” be held, that he be awarded damages, and that the  
3 undersigned and Zurrullo be found to have “criminally and civilly violated  
4 Petitioner’s rights.” Thus, the gist of petitioner’s action is an attempt to assert  
5 civil rights claims and to obtain damages against individual defendants. Such  
6 claims are not cognizable in a habeas petition. The Court accordingly finds that  
7 the Petition is subject to dismissal.

8 The Court further finds that granting petitioner leave to amend this action to  
9 state a habeas claim would be futile. Earlier this year, petitioner filed another  
10 habeas action, *Adrian Moon v. William Muniz*, CV 18-1558 SVW (FFM) (“*Moon*  
11 *v. Muniz*”), that ostensibly challenges the terms on which he was released on  
12 parole. If petitioner does in fact intend to challenge his parole terms by means of  
13 the instant Petition, the Petition would would be subject to dismissal as second or  
14 successive. *See* 28 U.S.C. § 2244(b).

15 Second, in *Moon v. Muniz*, petitioner’s original and amended pleadings  
16 included claims sounding in civil rights rather than habeas. (*See Moon v. Muniz*,  
17 Docket No. 63 at 2-4.) In granting petitioner a final opportunity to amend his  
18 pleading, the Honorable Frederick F. Mumm directed petitioner to “delete any  
19 claims for monetary compensation against anyone” and to file a civil rights  
20 action, rather than a habeas action, if he wished to pursue such claims. (*Id.* at 3.)  
21 That petitioner subsequently filed the instant Petition, which sounds squarely in  
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26 of a conviction or sentence by means of a civil rights action. *Heck v. Humphrey*,  
27 512 U.S. 477 (1994). Therefore, respondents’ alleged wrongful conduct, which  
28 allegedly prevented the reopening of civil rights actions, has no bearing on  
whether petitioner remains incarcerated.

1 civil rights, suggest that petitioner has no intention of abiding by the distinction  
2 between civil rights and habeas rights actions, but will continue to file Section  
3 2254 pleadings seeking monetary damages against individual defendants.<sup>2</sup>

4 Finally, the Court finds that petitioner is not entitled to a certificate of  
5 appealability (“COA”). Under Rule 11(a) of the Rules Governing § 2254  
6 Actions, the district court must issue or deny a COA when it enters a final order  
7 adverse to the applicant. Before entering the final order, the court may direct the  
8 parties to submit arguments on whether a certificate should issue. *Id.* Here, given  
9 the Court’s ruling on settled legal issues, the Court does not require any  
10 arguments from the parties on whether a COA should issue.

11 Under 28 U.S.C. § 2253(c)(2), a COA may issue “only if the applicant has  
12 made a substantial showing of the denial of a constitutional right.” Here, the  
13 Court dismisses Petition on the ground that petitioner’s claims are not cognizable  
14 in habeas. Thus, the Court’s determination of whether a COA should issue is  
15 governed by the Supreme Court’s decision in *Slack v. McDaniel*, 529 U.S. 473  
16 (2000) (“*Slack*”). In *Slack*, the Supreme Court held that when the district court  
17 denies a habeas petition on procedural grounds without reaching the prisoner’s  
18 underlying constitutional claim, a COA should issue “when the prisoner shows, at  
19 least, that jurists of reason would find it debatable whether the petition states a  
20 valid claim of the denial of a constitutional right *and* that jurists of reason would  
21 find it debatable whether the district court was correct in its procedural ruling.”

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23 <sup>2</sup> Petitioner may be motivated by the fact that the Court has previously determined  
24 that he has “three strikes” against him under 28 U.S.C. § 1915(g) and must  
25 therefore meet certain conditions before he may proceed *in forma pauperis*. (See  
26 *Adrian Moon v. Juanita Garbutt et al.*, CV 17-3459 SVW (FFM), Docket Nos. 6-  
27 9.) As the fee for filing a habeas action in the Central District is \$5.00, compared  
28 to \$350 for a civil action (see Schedule of Fees, CACD Form G-72 (07/18), it  
would be to petitioner’s advantage to present civil rights claims in the guise of a  
habeas petition.

1 529 U.S. at 484 (emphasis added). Here, given the obvious non-cognizability of  
2 petitioner's claims, jurists of reason would not find it debatable whether the  
3 district court was correct in its ruling.

4 IT IS THEREFORE ORDERED that this action be summarily dismissed  
5 without prejudice, pursuant to Rule 4 of the Rules Governing Section 2254 Cases  
6 in the United States District Courts. A certificate of appealability is denied.

7 LET JUDGEMENT BE ENTERED ACCORDINGLY.  
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9 Dated: July 24, 2018



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11 STEPHEN V. WILSON  
12 United States District Judge  
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14 Presented by:  
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17 /S/ FREDERICK F. MUMM  
18 FREDERICK F. MUMM  
19 United States Magistrate Judge  
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